

Below is an Opinion of the Court.


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	10-33202-elp7
PATRICK GISLER,)	
)	
Debtor.)	
_____)	
)	Adversary No. 11-03106-elp
)	
MICHAEL B. BATLAN, Trustee,)	
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
PATRICK GISLER,)	
)	
Defendant.)	
_____)	

Plaintiff trustee filed this proceeding to determine the Chapter 7¹ bankruptcy estate's rights in two properties, Madera Ranch and Gibson Airpark, under a settlement agreement ("Agreement") entered into by debtor and the trustee prior to this adversary proceeding. At issue is each parties' right to certain proceeds from the sale of the properties.

¹ All chapter and section references in this Memorandum Opinion are to the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

1 Because the operative facts surrounding the two properties are
2 sufficiently different to warrant separate discussion, this Memorandum
3 Opinion treats each in succession, first addressing Madera Ranch, and
4 then Gibson Airpark.²

5 I. MADERA RANCH

6 A. Facts

7 Long before debtor filed this bankruptcy case, members of debtor's
8 family owned a ranching property consisting of two parcels in California
9 known as Madera Ranch ("Madera Ranch"). For many years Vincent E. Gisler
10 ("Vincent"),³ debtor's father, owned Madera Ranch as Trustee of the
11 Gisler Family Trust ("Family Trust"). The Family Trust conveyed a
12 partial interest in Madera Ranch to entities that debtor and his brother,
13 Joel Gisler ("Joel"), owned. Subsequently, but before debtor's
14 bankruptcy filing, full legal title of the property was conveyed to Joel
15 through a number of conveyances. The parties agree that the conveyances
16 of Madera Ranch to Joel were to enable the Gislers to more easily
17 partition the property or use it for alternate purposes, not to change
18 the beneficial ownership of the property. The parties disagree, however,
19 about who owned the beneficial interest in Madera Ranch.

20
21 ² Debtor asserted five counterclaims, none of which has merit,
22 and they will not be discussed separately. For the reasons explained
23 below, debtor's first and second counterclaims are without merit. As to
24 the third and fourth counterclaims, I find that debtor failed to prove
fraud or breach of duty by an officer of the court. Debtor's fifth
counterclaim lacks merit because Joel Gisler, not the trustee, held legal
title to Madera Ranch and controlled its sale.

25 ³ Because debtor's father, Vincent Gisler, and debtor's brother,
26 Joel Gisler, share the same last name, I refer to them by their first
names for clarity.

1 Seeking to resolve questions about the ownership of Madera Ranch and
2 a number of other issues, the trustee and debtor entered into settlement
3 negotiations that led to the Agreement. The court approved the
4 Agreement. The parties later disagreed as to the meaning of the
5 Agreement they reached and the trustee filed this lawsuit to resolve
6 those disagreements.

7 After the trustee and debtor signed the Agreement, Joel sold Madera
8 Ranch, placing one-third of the proceeds (\$288,002.89), the amount
9 subject to disputed ownership, in trust with the trustee, until ownership
10 could be resolved in this adversary proceeding.

11 B. Parties' Arguments

12 Debtor argues that the Family Trust was the sole beneficial owner of
13 Madera Ranch, that he has a fifty percent beneficial interest in the
14 Family Trust, and, therefore, he is entitled to the proceeds attributable
15 to his interest in the Family Trust. The trustee concedes that he is not
16 generally entitled to the debtor's beneficial interest in the Family
17 Trust. But the trustee argues that, under the Agreement, debtor
18 relinquished debtor's claim, if any, to Madera Ranch, even if that claim
19 arose from his interest in the Family Trust.⁴ For reasons explained
20 below, the evidence supports the trustee's position.

21 ////

22 ////

23
24 ⁴ The trustee also argues that Joel, debtor, and their companies
25 were the beneficial owners of the property and the trustee is entitled to
26 debtor's share of the proceeds. Because the dispute is resolved by
interpreting the Agreement, I do not resolve the issue of who owned a
beneficial interest in Madera Ranch.

1 C. Legal Analysis

2 1. Overview of Methodology

3 A settlement agreement is a contract subject to the local laws of
4 contract construction and interpretation. United Commercial Ins. Serv.,
5 Inc. v. Paymaster Corp., 962 F.2d 853, 856 (9th Cir. 1992) (applying
6 California state law to interpret a settlement agreement). Oregon
7 contract law uses a three-step methodology for contract interpretation.
8 Yogman v. Parrott, 325 Or. 358, 361-62 (1997).

9 "First, the court examines the text of the disputed provision, in
10 the context of the document as a whole. If the provision is clear, the
11 analysis ends."⁵ Id. at 361. A provision is ambiguous when it
12 "reasonably can, in context, be given more than one meaning." Id. at
13 363-64 (quoting Pac. First Bank v. New Morgan Park Corp., 319 Or. 342,
14 347-48 (1994)).

15 If the provision is ambiguous, the court proceeds to the second
16 step, "examin[ing] extrinsic evidence of the contracting parties' intent"
17 to determine the meaning of the contract. Yogman, 325 Or. at 363; see
18 also ORS 41.740 (exception to parol evidence rule barring extrinsic
19 evidence "to explain an ambiguity").

20 The third step to determine the meaning of a contract term, which is
21 reached only "if the meaning of a contractual provision remains ambiguous
22

23 ⁵ The district court in this district has reached different
24 conclusions about the proper role of parol evidence in this first step.
25 Compare Thomas v. OneWest Bank, FSB, 2011 WL 3585042, *2 (D. Or. 2011)
26 (parol evidence not considered) with Malmquist v. OMS Nat'l Ins. Co.,
2011 WL 3298900 (D. Or. 2011) (parol evidence considered). Because I
find the Agreement ambiguous on its face, I need not reach this question.

1 after the first two steps have been followed," is to rely "on appropriate
2 maxims of construction." Yogman, 325 Or. at 364.

3 2. Application of Methodology

4 a. Step One - Ambiguity

5 The relevant portions of the Agreement provide:

6 [Trustee] hereby stipulates that [debtor's] interests in the [Family
7 Trust and other trusts] are not property of the estate

8 Ex. 14, p. 5, § 1(e).

9 [Debtor] agrees that whatever interest in Madera Ranch is recovered
10 by the estate shall not be subject to any claim from [debtor.]

11 Ex. 14 p. 5, § 2(d).

12 The text of these two provisions, taken together, is subject to
13 either of two reasonable interpretations.

14 The Agreement could be read, as debtor urges, to reserve the
15 question of ownership of Madera Ranch for another day. Under this
16 interpretation, once ownership of Madera Ranch is determined, Sections
17 1(e) and 2(d) govern distribution of the proceeds from the property sale.
18 To the extent the Family Trust retained a beneficial interest in Madera
19 Ranch, Section 1(e) grants debtor his share of that interest, free of any
20 claim from the trustee. To the extent debtor held a beneficial interest
21 in Madera Ranch at the time he filed his bankruptcy petition, Section
22 2(d) grants debtor's beneficial interest to the estate, free of any claim
23 from debtor.

24 Alternately, the Agreement could be read, as the trustee urges, to
25 resolve the dispute over the Madera Ranch property in favor of the
26 trustee. "Whatever interest" in Section 2(d) is read to mean "any

1 interest whatever including interests, if any, held by the Family Trust."
2 Section 1(e) is read to encompass only Family Trust property not
3 otherwise treated in the Agreement.

4 Because the Agreement "reasonably can, in context, be given more
5 than one meaning," I find the agreement ambiguous.

6 b. Step Two - Extrinsic Evidence

7 Because the Agreement is ambiguous, I proceed to step two of the
8 analysis: "examin[ing] extrinsic evidence of the contracting parties'
9 intent" to determine the Agreement's meaning. Yogman, 325 Or. at 363.
10 "In construing an instrument, the circumstances under which it was made,
11 including the situation of the subject and the parties may be shown
12" ORS 42.220. Additionally, "the parties' practical construction
13 of an agreement may hint at their intention." Yogman, 325 Or. at 364.

14 The trustee argues that the extrinsic evidence shows conclusively
15 that debtor released to the trustee whatever interest he had in Madera
16 Ranch from whatever source, including the Family Trust, in exchange for
17 the trustee's payment of \$85,000. Plaintiff's Trial Memo, p. 13.
18 Further, the trustee argues that, in light of the parties' negotiations,
19 no other interpretation is reasonable. Id. I agree.

20 First, the nature of the underlying disputes that led to the
21 Agreement supports the trustee's argument that the parties resolved the
22 Madera Ranch issue. At the time negotiations commenced between the
23 parties, a number of outstanding issues remained, some presenting
24 significant factual uncertainty. Both debtor's counsel and the trustee
25 testified to the parties' intent to reach a complete and universal
26 settlement in order to avoid costly litigation. Email correspondence

1 between the parties during the negotiation period also reflects this
2 intent. Ex. 9. Further, I find compelling the trustee's testimony that
3 it was in response to this uncertainty that the trustee agreed to pay
4 debtor \$85,000 in exchange for debtor releasing any interest in Madera
5 Ranch, including any interest obtained through the Family Trust, thereby
6 avoiding costly litigation of ownership.

7 When examining the parties' discussions, one party's "statement and
8 [the opposing party's] silence in response to it are circumstances
9 underlying the formation of the contract." Batzer Constr. Inc. v. Boyer,
10 204 Or. App. 309, 321 (2006) (citing Stanfield v. Arnwine, 102 Or. 289,
11 299, (1921)). For the following reasons, I find that during the
12 settlement negotiations, the trustee communicated his intent to resolve
13 the disposition of Madera Ranch in the Agreement and debtor acquiesced to
14 it.

15 The trustee and his counsel sent several emails expressing a desire
16 to resolve the Madera Ranch dispute. Ex. 9. Also, the Motion and Notice
17 of Intent to Settle, submitted to the court after the trustee provided
18 debtor's counsel an opportunity to review it and object, stated that "the
19 estate shall hold whatever interest Debtor has in the real property known
20 as Madera Ranch in Madera County California free and clear of any claim
21 by the Debtor." Ex. 15.

22 Debtor's counsel testified that he understood that the trustee
23 wanted debtor's entire interest in Madera Ranch, regardless of when
24 debtor acquired the interest and regardless of the nature of his
25 interest. The trustee's counsel testified that debtor's counsel never
26 communicated any intent to preserve for debtor a claim to Madera Ranch.

1 Only in very early-stage negotiations did debtor express a desire to save
2 resolution of the Madera Ranch issue for another day, and the trustee
3 expressly rejected that request. After those early negotiations, the
4 trustee repeatedly expressed his understanding that the parties were
5 resolving through the Agreement that he, not debtor, was entitled to
6 debtor's interest in Madera Ranch, whatever the nature of that interest
7 might be. None of the later-stage email communications between the
8 parties reflected a different intent on the part of debtor or suggested
9 that debtor understood the Agreement to mean something different.

10 Initial drafts of the Agreement provided that debtor "will agree
11 that whatever interest in Madera Ranch is recovered by the estate shall
12 not be subject to a claim of exemption." Ex. 10, p. 4, § 2(d).
13 Thereafter, at the trustee's insistence, the parties changed the
14 provision to the form they ultimately adopted: "[Debtor] agrees that
15 whatever interest in Madera Ranch is recovered by the estate shall not be
16 subject to any claim from [debtor.]" Ex. 14, p. 5, § 2(d). The trustee
17 insisted on this change, explaining that he "is purchasing whatever
18 interest [debtor] thinks he might have, from whatever source, in Madera
19 Ranch for the \$85,000." Ex. 19, p.2. Therefore, I find that debtor's
20 acceptance of the trustee's change signaled debtor's acceptance of the
21 trustee's interpretation of the meaning of that change.

22 The parties presented scant evidence of their "practical
23 construction" of the agreement, likely because the Agreement became
24 controversial only a very short time after execution. However, in the
25 final stage of negotiation, the trustee submitted to the court the Motion
26 and Notice of Intent to Settle for the purpose of providing interested

1 parties in the bankruptcy case the opportunity to object. The trustee's
2 filing of the Motion and Notice of Intent to Settle, and debtor's lack of
3 objection to that Notice, lead me to find that the Motion and Notice
4 reflects debtor's and the trustee's practical construction of the
5 agreement. The Motion and Notice reflected the trustee's interpretation
6 of the provision.

7 Examining the Agreement in light of the extrinsic evidence
8 "relat[ing] to the circumstances under which the contract was made," I
9 find the trustee's interpretation is the correct one. Specifically, the
10 testimonial and documentary evidence overwhelmingly support the
11 conclusion that the parties entered into the Agreement intending to
12 resolve the Madera Ranch issue, and the Agreement entered into by the
13 parties included debtor releasing to the trustee any interest he had in
14 Madera Ranch from whatever source, including any interest acquired
15 through the Family Trust. Because I conclude that the second step in the
16 analysis supports the trustee's position, I do not reach the third step
17 in which I would apply maxims of statutory construction.

18 II. GIBSON AIRPARK

19 A. Facts

20 Debtor and his father, Vincent, were among the original owners of
21 Gibson Airpark LLC ("Gibson"), a single-purpose entity holding real
22 property near Bend, Oregon. The Operating Agreement of the LLC indicates
23 that debtor owned a 37.5% membership interest and Vincent owned a 12.5%
24 interest in the LLC. Ex. 21, p. 1. On Schedule K-1 of the 2008 and 2009
25 Gibson partnership income tax returns, debtor reported holding an
26

1 interest equal to the sum of his and his father's interest in Gibson.⁶
2 Ex. 24, p. 1; Ex. 23, p. 9. In 2009, Vincent died.

3 In November 2011, the trustee and the other owners sold the real
4 property owned by Gibson and distributed proceeds from the sale
5 ("Proceeds") to the members.⁷ The trustee now holds 12.5% of the
6 Proceeds (\$51,790.00), which corresponds to the amount of Vincent's
7 original ownership share. Joint Statement of Agreed Facts, ¶ 36.

8 B. Parties' Arguments

9 Debtor argues that he is entitled to the portion of the Proceeds
10 attributable to Vincent's ownership share under Section 1(e) of the
11 Agreement⁸ because he acquired Vincent's Gibson interest via inheritance.
12 The trustee argues that debtor could not have inherited Vincent's
13 interest in Gibson because Vincent transferred his interest to debtor
14 during Vincent's lifetime and, therefore, Section 1(e) does not apply.
15 The trustee further argues that debtor acquired Vincent's Gibson interest
16 pre-petition, making the Proceeds property of the estate.

17 C. Legal Analysis

18 Resolving whether debtor or the trustee is entitled to the share of
19

20 ⁶ The 2009 tax return reflected ownership percentages debtor
21 unilaterally adjusted as a result of a capital call allegedly responded
22 to by only some of the members of Gibson. However, this adjustment was
23 later reversed because the trustee, Gibson's accountant and the other co-
24 manager concluded that the adjustment in ownership percentage made by
debtor was not permitted by the Operating Agreement.

24 ⁷ The distribution of the Proceeds was made according to the
original ownership percentages.

25 ⁸ In section 1(e) of the Agreement the trustee stipulated that
26 "Trustee has no claim on Gisler's inheritance from Vincent and/or Kathryn
Gisler[.]" Ex. 14, p. 5.

1 the Gibson Proceeds attributable to the interest originally owned by
2 Vincent turns on the factual question of whether debtor acquired
3 Vincent's interest before or after Vincent's death. For the reasons
4 explained below, I find that debtor acquired Vincent's interest in Gibson
5 while Vincent was alive and not by inheritance. Therefore, under
6 § 541(a),⁹ the Proceeds are property of the estate and the trustee is
7 entitled to them.

8 Debtor testified that he was the tax matters partner of Gibson and
9 in that role hired the accountant who prepared Gibson's 2008 partnership
10 income tax return. As noted above, the tax return reflected on Schedule
11 K-1 that debtor owned an interest in Gibson equal to the sum of his and
12 his father's interest in the company. When questioned about the validity
13 of the tax return, debtor testified that he failed to notice the change.
14 Because I find the tax return more credible as to the ownership of Gibson
15 than debtor's testimony that, even though he was the tax matters partner,
16 he failed to notice the adjustment in ownership interest reflected in the
17 return, I find that Vincent transferred his interest in Gibson to debtor
18 in 2008 or earlier. It logically follows that Vincent transferred his
19 interest in Gibson to debtor prior to his death in 2009, and the transfer
20 could not have been made through inheritance. Therefore, Section 1(e) of
21 the Agreement does not apply to Gibson and the Proceeds are property of
22 debtor's bankruptcy estate.

23 ////

25 ⁹ Section 541(a) provides that the bankruptcy estate
26 is comprised of all the debtor's property, wherever located and by
whomever held, with certain exceptions not applicable in this dispute.

1 CONCLUSION

2 The text of the Agreement, as it pertains to Madera Ranch, is
3 ambiguous. Examination of the Agreement in light of the extrinsic
4 evidence "relat[ing] to the circumstances under which the contract was
5 made" reveals that the parties entered into the Agreement intending to
6 resolve the Madera Ranch issue. Under section 2(d) of the Agreement
7 debtor acknowledged that whatever interest he had in Madera Ranch that
8 the trustee recovered would belong to the estate free of any claim by the
9 debtor. The trustee is holding \$288,002.89 in proceeds from the debtor's
10 interest in Madera Ranch. Those proceeds belong to the estate under the
11 Agreement.

12 Section 1(e) in the Agreement, addressing debtor's inheritance from
13 his parents, does not apply to Gibson. Debtor received Vincent's
14 interest in Gibson before Vincent's death, so the interest could not have
15 been transferred by inheritance. Therefore, Section 1(e) does not apply
16 as to Gibson and the Proceeds belong to the bankruptcy estate.

17 For the foregoing reasons, I will grant judgment for the trustee
18 declaring that the trustee is entitled to the \$288,002.89 in sales
19 proceeds from the one-third interest in Madera Ranch currently held in
20 trust and \$51,790.00 in proceeds from the sale of Vincent's 12.5%
21 interest in Gibson, free of any claim or interest of debtor. I will
22 dismiss debtor's counterclaims.

23 Counsel for the trustee shall, within fourteen (14) days, lodge a
24 judgment consistent with this Memorandum Opinion.
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